

EXHIBIT A

From: [Casey M. Preston](#)
To: [Posner, Ethan](#); [Raofield, Jason](#); [Dunn, Matthew](#); [Pastan, Nicholas](#)
Cc: [Theodore Leopold](#); [Gary Azorsky](#); [Leslie Mitchell Kroeger](#); [Diana L. Martin](#); [Poorad Razavi](#); [Adnan Toric](#)
Subject: Janssen
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Attachments: [image001.png](#)

[EXTERNAL]

Counsel, from Janssen's document production and the recent depositions of its employees, it has become clear that Janssen is selectively disclosing documents and allowing testimony in an effort to create the appearance that its legal counsel reviewed the services/programs that are the alleged illegal remuneration for compliance with the law, including the Anti-Kickback Statute, and subsequently approved the provision of the services/programs to physician practices. At the same time, Janssen is improperly claiming privilege to block Plaintiff from discovering the actual legal advice it sought and obtained. Additionally, Janssen's contention that it is not asserting a reliance upon counsel defense is false and misleading; its reliance upon the promotional review committee approvals are the equivalent of a reliance upon counsel defense.

Because Janssen's knowledge regarding the wrongfulness of its conduct—an element of Plaintiff's AKS claim as well as an issue Janssen itself has raised through its good faith belief defense—is one of the principal issues and disputes in the case, we believe that Janssen's misuse of the privilege must be addressed before proceeding with the Conley, Heckmann, Knepp, Walls, and Wickmann depositions. Going forward with those depositions while Janssen is blocking the witnesses from providing critical testimony concerning their communications with legal counsel concerning the illegality or legality of the services/programs would be both prejudicial and inefficient. Accordingly, as a result of Janssen's actions, we are forced to postpone those depositions until after the Court decides an upcoming motion regarding Janssen's misuse of the attorney-client privilege, which we will be filing shortly. Also, while it is Plaintiff's wish to complete this initial discovery phase as soon as practicable, in light of the need to resolve the privilege issue before resuming depositions, we no longer believe that this discovery phase can be completed by the end of April. We will be in touch about scheduling a meet and confer in early January before we file the motion.

In the meantime, we wish you all a happy holidays.

Casey

Casey M. Preston

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